

**J. PETER STAPLES, OSB No. 79404**  
 Email: pete@chernofflaw.com  
**CHERNOFF, VILHAUER, MCCLUNG & STENZEL, LLP**  
 1600 ODS Tower  
 601 SW Second Avenue  
 Portland, OR 97204-3157  
 Telephone: (503) 227-5631  
 Facsimile: (503) 228-4373

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT  
 DISTRICT OF OREGON

**COLLEGENET, INC.,**  
 a Delaware corporation,

Case No. 3:06 CV 00663 PK

Plaintiff,

**ANSWER**

v.

**A.C.N, INC., d/b/a ANYCOLLEGE.NET,**  
 a Minnesota corporation,

**Trademark Case**

Defendant.

For its Answer to the Complaint for Trade Name and Service Mark Infringement,  
 False Designation, and Unfair Competition (“Complaint”), A.C.N., Inc. (“AnyCollege”) responds as follows:

## **GENERAL DENIAL**

Unless expressly admitted, AnyCollege denies each and every allegation contained in the Complaint.

## **SPECIFIC RESPONSES**

1. AnyCollege is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 1, and thus denies the same.
2. AnyCollege admits the allegations in Paragraph 2.
3. AnyCollege admits that the Complaint purports to assert claims under the Trademark Laws of the United States and the common law. AnyCollege admits that federal courts have subject matter jurisdiction for the referenced federal statutes. AnyCollege denies the remaining allegations of paragraph 3.
4. AnyCollege admits that the parties are citizens of different states but denies that the amount in controversy exceeds \$75,000, and denies any remaining allegations of paragraph .
5. AnyCollege denies the allegations of paragraph 5.
6. AnyCollege is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 6, and thus denies the same.
7. AnyCollege is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 7, and thus denies the same.
8. AnyCollege is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 8, and thus denies the same.
9. AnyCollege is without knowledge or information sufficient to form a belief as to

the truth or falsity of the allegations in Paragraph 9, and thus denies the same.

10. AnyCollege is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 10, and thus denies the same.

11. AnyCollege is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 11 and therefore denies the same.

12. AnyCollege is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 12, and thus denies the same.

13. AnyCollege denies the allegations in Paragraph 13.

14. AnyCollege admits that it uses AnyCollege.Net as a trade name and service mark and anycollege.net as a domain name, and that it operates a website providing information services about colleges to prospective students. AnyCollege further admits that, in some cases, prospective students may link to a particular college's website to file an application for admission. AnyCollege denies the remaining allegations in Paragraph 14.

15. AnyCollege admits that it operates a website providing information services about colleges to prospective students under domain names "anycollege.net," "anycollege.com," and "anycollege.org." AnyCollege denies the remaining allegations in Paragraph 15.

16. AnyCollege admits that, in some cases, prospective students may link to a particular college's website from the AnyCollege.Net site to file an application for admission. AnyCollege denies the remaining allegations in Paragraph 16.

17. AnyCollege admits that it has used a web page frame that displays the word AnyCollege.Net. AnyCollege is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 17, and thus denies the same.

18. AnyCollege admits the allegations in Paragraph 18.

19. Paragraph 19 asserts legal conclusions to which no responsive pleading is required. To the extent Paragraph 19 contains factual averments, the allegations are denied.

20. AnyCollege admits that it received a letter on or about October 2000 alleging that CollegeNET was the owner of federal service mark Registration No. 2,045,384 and alleging that AnyCollege infringed such registration. AnyCollege denies any remaining allegations of paragraph 20.

21. AnyCollege admits that it received a letter on or about October 2000 alleging CollegeNET had used COLLEGENET as a service mark since at least 1995 and that CollegeNET was the owner of federal service mark Registration No. 2,045,384 and alleging that AnyCollege infringed such registration. AnyCollege denies any remaining allegations of paragraph 21.

22. AnyCollege admits that it received a letter on or about October 2000 alleging that CollegeNET was the owner of federal service mark Registration No. 2,045,384 and alleging that AnyCollege infringed such registration. AnyCollege admits that it continued to offer college-related computer database-based services both on the web and through other marketing activities under the name AnyCollege.Net after receiving the October 2000 letter from CollegeNET. AnyCollege denies the remaining allegations in Paragraph 22.

23. AnyCollege admits that it offers college-related computer database-based services under the name and mark AnyCollege.Net. AnyCollege denies the remaining allegations of paragraph 23.

24. AnyCollege is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 24, and thus denies the same.

25. AnyCollege admits the allegations in Paragraph 25.

26. AnyCollege denies the allegations of paragraph 26.

27. AnyCollege admits that CollegeNET is one word and that AnyCollege is one word followed by the commonly used top level domain name designation “.Net.” AnyCollege denies the remaining allegations in Paragraph 27.

28. AnyCollege denies the allegations in Paragraph 28.

29. AnyCollege denies the allegations in Paragraph 29.

30. AnyCollege denies the allegations in Paragraph 30.

31. AnyCollege denies the allegations in Paragraph 31.

32. AnyCollege denies the allegations in Paragraph 32.

33. AnyCollege denies the allegations in Paragraph 33.

34. AnyCollege denies the allegations in Paragraph 34.

### **COUNT I**

(Infringement of Federally Registered Service Mark)

35. AnyCollege repeats and realleges its responses set forth above to the allegations in ¶¶ 1-34 of the Complaint.

36. AnyCollege admits that 15 U.S.C. §1114 addresses infringement of a federally registered trademark. To the extent Paragraph 36 contains factual averments, the allegations are denied.

37. AnyCollege denies the allegations in Paragraph 37.
38. AnyCollege denies the allegations in Paragraph 38.
39. AnyCollege denies the allegations in Paragraph 39.
40. AnyCollege denies the allegations in Paragraph 40.
41. AnyCollege denies the allegations in Paragraph 41.

## **COUNT II**

(Federal False Designation of Origin and False Representation)

42. For its response to Paragraph 42, AnyCollege repeats and realleges its responses set forth above to the allegations in ¶¶ 1-41 of the Complaint.

43. AnyCollege admits that 15 U.S.C. §1125(a) addresses false designation of origin, false or misleading description of fact, false or misleading representation of fact and false advertising. To the extent Paragraph 43 contains factual averments, the allegations are denied.

44. AnyCollege is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 44, and thus denies the same.

45. AnyCollege denies the allegations in Paragraph 45.

46. AnyCollege denies the allegations in Paragraph 46.

47. AnyCollege is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 47, and thus denies the same.

48. AnyCollege is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 48 and therefore denies the same. To the extent Paragraph 48 contains factual averments, the allegations are denied.

49. AnyCollege is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 49, and thus denies the same.

50. AnyCollege is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 50, and thus denies the same.

51. AnyCollege denies the allegations in Paragraph 51.

52. AnyCollege denies the allegations in Paragraph 52.

53. AnyCollege denies the allegations in Paragraph 53.

54. AnyCollege denies the allegations in Paragraph 54.

### **COUNT III**

(Trademark Infringement)

55. For its response to Paragraph 55, AnyCollege repeats and realleges its responses set forth above to the allegations in ¶¶ 1-54 of the Complaint.

56. AnyCollege is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 56, and thus denies the same.

57. AnyCollege denies the allegations in Paragraph 57.

58. AnyCollege denies the allegations in Paragraph 58.

59. AnyCollege denies the allegations in Paragraph 59.

60. AnyCollege denies the allegations in Paragraph 60.

61. AnyCollege denies the allegations in Paragraph 61.

**COUNT IV**

(Common law unfair competition and infringement)

62. For its response to Paragraph 62, AnyCollege repeats and realleges its responses set forth above to the allegations in ¶¶ 1-61 of the Complaint.

63. AnyCollege denies the allegations in Paragraph 63.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff fails to state any claims upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of laches.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrines of waiver, estoppel and unclean hands.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred in whole or in part by the relevant statutes of limitations.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claimed damages, in whole or in part, were the result of causes and/or circumstances over which AnyCollege had no control.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff failed to mitigate damages, if any exist.

**SEVENTH AFFIRMATIVE DEFENSE**

Any damages suffered by Plaintiff were not proximately caused by AnyCollege.



**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claim for an injunction fails for failure of irreparable injury.

**JURY DEMAND**

AnyCollege demands a jury trial for all issues triable to a jury.

**PRAYER FOR RELIEF**

WHEREAS, Defendant A.C.N., Inc. prays that this Court:

1. Dismiss Plaintiff's Complaint with prejudice and on the merits;
2. Award Defendant its costs, disbursements and witness fees; and
3. Grant Defendant such other and further relief as may seem just and equitable.

Dated: June 14, 2006.

Respectfully submitted,

CHERNOFF, VILHAUER,  
McCLUNG & STENZEL, L.L.P.

/s/ J. Peter Staples  
\_\_\_\_\_  
J. Peter Staples, OSB No. 79404  
Of Attorneys for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 14, 2006, a true copy of the foregoing **ANSWER** was served by electronic filing and email to:

Michael N. Zachary  
Email: [Michael.zachary@klarquist.com](mailto:Michael.zachary@klarquist.com)  
Stephen J. Joncus  
Email: [Stephen.joncus@klarquist.com](mailto:Stephen.joncus@klarquist.com)  
KLARQUIST SPARKMAN, LLP  
121 S.W. Salmon Street, Suite 1600  
Portland, OR 97204  
Telephone: 503-595-5300  
Facsimile: 503-595-5301

Of Attorneys for Plaintiff

CHERNOFF VILHAUER  
McCLUNG & STENZEL, LLP

By: /s/ J. Peter Staples  
J. Peter Staples  
Email: [pete@chernofflaw.com](mailto:pete@chernofflaw.com)  
601 S.W. Second Avenue  
1600 ODS Tower  
Portland, OR 97204-3157  
Telephone: 503-227-5631  
Facsimile: 503-228-4373

Of Attorneys for Defendant